

Justice, Mercy, and the Lockerbie Bomber

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You don't often hear the word *tendentious* these days, and more's the pity. When an issue like the release of the Lockerbie bomber comes up, it helps to have so elegant a word to explain it.

More on that in moment. First, some background. When Scotland's Justice secretary, Kenny MacAskill, agreed on August 20 to return Abdelbaset al-Megrahi to Libya, he put into play an argument — “on compassionate grounds” — rarely heard in international affairs. Megrahi, a former Libyan intelligence officer, had been imprisoned in Scotland in 2001 for his role in the 1988 terrorist bombing of Pan Am Flight 103 over Lockerbie, Scotland, which killed 270 people. Diagnosed this year as terminally ill and given only three months to live, he qualified for release under Scottish law on grounds of compassion.

If argued properly, the choice facing Scottish authorities would have been of the right-versus-right variety. In this justice-versus-mercy dilemma, the justice side would oppose releasing Megrahi, while mercy would argue for his release.

It's not hard to make the case for justice. Megrahi was found guilty in a properly constituted court of law of a crime for which Libya, without expressing any remorse, later took responsibility and paid reparations. Acting in cold blood, Megrahi deliberately organized the murder of his victims. When his appeals were denied, the first part of what we commonly think of as justice was concluded: The court found him guilty.

But justice has two more parts — sentencing and incarceration. If Megrahi had been dealt a flaccid sentence instead of the life term that he got, the trial would have been seen as a farce. Fortunately, in high-visibility cases, the trial and the sentencing get lots of public scrutiny. But once prisoners are incarcerated, public attention moves on. If Megrahi, once in prison, had been pardoned quickly or moved to house arrest or allowed to escape, justice would have been as deeply compromised as by a phony trial or a bad sentence. Yet because the natural human tendency is to commiserate with a prisoner who is still alive — while forgetting those who, because of his actions, are now dead — justice (say those who argue for it) can easily be abrogated. Without genuine penalties and a promise to keep them in force, justice becomes a mockery.

Justice, then, is all about expectations. It promises that, if you commit a crime, you will be punished. Mercy, by contrast, is about exceptions. Those who argue for mercy note that no legislative body, and no group of enforcers, can foresee every eventuality. So every judicial system must allow for circumstances that go beyond the law — even, at times, a terminal disease that could cause someone like Megrahi to die in jail.

And that, say those who argue for mercy, raises deep questions. Is justice simply about revenge, penalty, and pain? Or is it about reformation, transformation, and progress? Can criminals change? Both religion and democracy insist that reformation is possible through spiritual growth or education. Without the conviction that humanity can progress — a conviction based on compassion — justice (in this view) would be nothing but a mindless doling out of penalties. Never mind that Megrahi expressed no compassion for those he murdered. That fact must not preclude his jailors from feeling compassion toward him, lest we be no better than he. Is there not some reason to hope that mercy, if expressed strongly enough, might awaken even the unregenerate to remorse, atonement, and compassion?

These two arguments for justice and mercy, then, make powerful and different cases. In Megrahi's case, you can justify the ethics of release (mercy) or the ethics of incarceration (justice). If, that is, you argue ethically. Which brings us back to tendentiousness.

My dictionary rather blandly defines tendentious as “marked by a tendency toward a particular point of view.” In fact, the word is more pungent. A tendentious argument is intentionally built on bias, prejudice, or partisanship from the outset, sometimes overtly but usually subtly and invisibly. It describes a rhetorical style that knows where it “intends” to go, and then sets out to get there by slants and spins, ellipses and omissions, or earnest, well-meaning illogic. Rather than working its way toward a rational conclusion, it first adopts the conclusion and then looks for justification.

Is that unethical? Yes, when knowingly used to distort an otherwise fair field of play. And that, in the end, is the suspicion underlying the recent Lockerbie arguments. Was a genuine right-versus-right process hijacked by a false ethic? Was the whole thing, as many observers believe, a deal by the British government to win better trade terms from oil-rich Libya? Was “compassionate grounds” used selectively for Megrahi but not for other prisoners?

More important, will this gesture make a mockery of other terrorist trials? On Monday, a British court found three men guilty of planning to blow up several transatlantic flights in 2006. If they are imprisoned, will the promise of punishment be kept? Or might they also be granted release if and when it suits the diplomatic environment of the moment?

That could be the most sobering trend of all. If the “tendency” is now to regard prisoners as pawns in international trade — Give back my convicted terrorists, and I'll give you more oil! — you can be sure that the tendentious arguments have only just begun.

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